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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/817,011	03/23/2001	Michael A. Calamari	98-808-1	7048
719	7590	05/12/2004	EXAMINER	
CATERPILLAR INC. 100 N.E. ADAMS STREET PATENT DEPT. PEORIA, IL 616296490			SHRIVER II, JAMES A	
			ART UNIT	PAPER NUMBER
			3618	

DATE MAILED: 05/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/817,011

Applicant(s)

CALAMARI ET AL.

Examiner

J. Allen Shriver

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/23/01 & 7/28/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claim 6 is objected to because of the following informalities: In line 12, the phrase "the signal line" should be changed to "the pressure signal line" for proper antecedent basis.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

3. **Claims 9-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.** Claim 9 recites the limitation "the governor control" in lines 11 and 13. There is insufficient antecedent basis for this limitation in the claim.

Claim 13 recites the limitation "the governor control" in lines 4 and 7. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swick et al. (US Patent 5,447,029) in view of Abels (US Patent 4,546,847).** Swick et al. discloses a work machine comprising an engine (see column 2, lines 17-18), a plurality of wheels (inherent); a source of hydraulic fluid (32); a hydrostatic transmission (10) including a hydraulic pump (12) connected with the engine, a motor (14), a pressure signal line (20,22) connected between the pump and the motor for transferring hydraulic fluid at various flows there between so that the motor drives the plurality of wheels at various speeds responsive to the flow of the hydraulic fluid, and a valve (16) disposed within the pressure signal line and movable from a closed position to a plurality of open positions for selectively neutralizing the hydraulic fluid flow to control the ground speed of the work machine independent from the engine speed (see column 1, line 11+). Swick et al. does not disclose an electronic engine speed control system operatively associated with and located remotely from the hydrostatic transmission for setting and maintaining the engine at any desired speed during neutralization of the hydrostatic transmission. Abels discloses an electronic engine speed control system (101a) for setting and maintaining the engine at any desired speed. At the time of the invention, it would have been obvious to a person of ordinary skill in this art to provide an electronic engine speed control system for maintaining the engine at any desired speed during neutralization of the hydrostatic transmission disclosed in Swick et al. in view of the teaching of Abels. The motivation for doing so would have been to allow the engine's speed to be maintained at a constant speed.

Regarding claim 7, it would be inherent that the engine speed control system would have means for disrupting the system so that the desired speed is no longer electronically set and maintained, for example when the vehicle is turned off.

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Regarding claim 8, it would also be inherent that the engine speed would be electronically set to the desired speed incrementally over a predetermined period of time, because the engine cannot go from standstill to 3000 rpm instantaneously, so the speed must be incrementally be increased over a period of time.

Allowable Subject Matter

6. Claims 9-13 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

7. The following is a statement of reasons for the indication of allowable subject matter: regarding claim 9, the prior, specifically Abels, did not disclose wherein the electronic engine speed control system includes an electronic control module, an operator switch connected to the control module and movable to a set position which sends an input signal with a desired engine speed valve to the control module, an engine sensor connectable between the engine and the control module for sensing the speed of the engine and sending an input signal with an actual engine speed valve to the control module, an actuator connectable between the control module and a governor control and responsive to a control signal from the control module for moving the governor control to any one of the plurality of positions, the control signal being delivered to the actuator as a function of the desired and actual values so that the engine speed is electronically set and maintained at the desired speed, and means for disrupting the control signal so that the engine speed is no longer electronically set and maintained at the desired speed.

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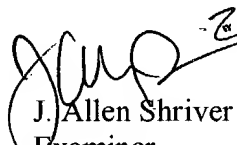
Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Nakamura (US Patent 6,104,976) is relied on to show an engine speed controller. Ferguson et al. (US Patent 5,873,427), Kropp et al. (US Patent 4,742,676), Yano et al. (US Patent 6,668,549 B2) and Kazmierczak et al. (US Patent 4,553,626) are relied on to show a hydrostatic drive system.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Allen Shriver whose telephone number is (703) 308-1224. The examiner can normally be reached on Mon-Thurs 7:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian L. Johnson can be reached on (703) 308-0885. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


J. Allen Shriver
Examiner
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5/6/04

JAS